IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 675 OF 1990

State of Maharashtra .. Appellant

versus

Chandrakant Laxman Choukhande .. Respondent

...

Mr.A.M. Shringarpure, APP for the State.

Mr.Vikas Shivarkar for the respondent.

CORAM : V.M. KANADE, J

DATED : 17th December 2004.

P.C:-

1. Heard the learned APP appearing on behalf of the State and the learned counsel appearing on behalf of the respondent.

2. The State has preferred this appeal against the judgement and order passed by the JMFC, Khandala in RCC no.70 of 1989. By the said judgement and order

dated 26th June 1990, the learned Magistrate was pleased to acquit the accused of the offence punishable u/s.279, 304-A of the IPC and section 116(9) and 112 of the Motor Vehicles Act.

3. The prosecution case in brief is that the accused was driving a Matador on the Pune Bangalore Highway and while overtaking a truck, he dashed a scooter which was coming from the opposite direction and as a result, Dnyaneshwar Kudle died on the spot and Sampat Govind Samgir was injured. A complaint was lodged. Thereafter, the accused was arrested. Investigation was completed. The prosecution examined three witnesses. The trial Court after appreciating the evidence adduced by the prosecution came to the conclusion that the prosecution had not proved its case beyond reasonable doubt and therefore, was pleased to acquit the accused. Against the said judgement and order, the present appeal has been preferred by the State. The learned APP appearing on behalf of the State has taken me through the judgement and order as also the oral and documentary evidence on record. He has submitted that PW no.1 Sampat Samgir was a pillion rider on the scooter and he has stated that the Matador had given a dash to the scooter. He

submitted that there was sufficient evidence to come to the conclusion that the accused was driving the Matador in a rash and negligent manner. He submitted that PW no.2 Ankush Chavan had identified the scooter and also had identified the driver. He submitted that therefore, the accused was liable to be convicted. He submitted that the trial Court had not taken into consideration the said evidence of these two important witnesses. The learned counsel appearing on behalf of the respondent has submitted that the trial court has given cogent reasons while acquitting the accused and there was no reason to interfere in the said judgement and order particularly after lapse of 14 years.

4. In the present case, the record shows that initially a complaint was filed by one Gurubachan Singh. However, the said FIR has not been produced by the prosecution. PW no.2 Ankush Chavan has claimed to have witnessed the said incident as he was driving a jeep and he was behind the Matador which had dashed against the scooter. However, this witness did not stop after the incident and subsequently wrote a letter to the Police Sub-Inspector which was received on 29th January 1989. In the said letter, he has stated that he could not stop the vehicle. It is

difficult to accept the testimony of this witness particularly when he has sent a letter after lapse of 7 days. He has not given any cogent reasons as to why he did not stop his vehicle after the accident and had chosen to sent a letter after a lapse of 7 days. Even otherwise from his evidence, it is difficult to arrive at a conclusion as to who was at fault when the accident took place. He has not stated the position of the scooter on the road when the accident had taken place. In order to arrive at a conclusion that a person has committed an offence of rash and negligent driving, it is essential to give the particulars about the vehicle in question and the position and speed of both the vehicles. Thus, it is difficult to to accept his testimony. Further, the complaint recorded by the police constable Mahadeo Kumbhar on the next day i.e. 23.1.1989 which is annexed at Exhibit-27, it is stated that when the Matador was trying to overtake a truck, scooter had slipped from the main road and as a result, the deceased Dnyaneshwar had sustained severe injury on his head. Thus, there are two contradictory versions which are brought on record by the prosecution. The first version which is immediately recorded on the next day suggests that the scooter had slipped and the deceased had sustained severe

injuries. A complaint which was subsequently recorded on the letter being sent by PW no.2 Ankush Chavan states that the Matador had given a dash to the scooter while it was overtaking the truck.

5. Even on the perusal of evidence of PW no.1 Sampat Samgir, it is difficult to come to a conclusion that the accused had committed an offence of rash and negligent driving. This witness has stated that Dnyaneshwar Kudle was driving the scooter and was sitting on the back side and he was a pillion rider. He has stated that the accident took place at about 8.00 p.m. and they were going on the left side of the road and one truck was followed by a Matador and both the vehicles were coming in a fast speed. He has not stated whether the head lights of the scooter was on and whether he was in a position to see the vehicles from the other direction as it was night time. Even otherwise, it is not possible for a pillion rider to see anything in the dark. Thus, even from the evidence of PW no.1, the prosecution has failed to establish commission of the said offence.

6. In mt view, the trial Court has given a finding that the prosecution had not proved its case

beyond reasonable doubt. I agree with the said finding for the reasons stated hereinabove. I do not see any reason to interfere in the said judgement and order passed by the trial Court.

7. Appeal is accordingly dismissed.

V.M. KANADE, J